

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

ERIC SCOTT BOYD and NAOMI NICOLE,
BOYD, on behalf of their minor child,
JANAE LEANN BOYD,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

* No. 13-634V
* Special Master Christian J. Moran
*
* Filed: February 5, 2015
*
* Stipulation; Trivalent influenza
* (“flu”) vaccine; transverse myelitis.

Andrew D. Downing, Phoenix, AZ, for Petitioners;
Jennifer L. Reynaud, United States Dep’t of Justice, Washington, DC, for
Respondent.

UNPUBLISHED DECISION¹

On February 2, 2015, respondent filed a joint stipulation concerning the petition for compensation filed by Eric and Naomi Boyd, on behalf of their daughter, Janae Leann Boyd, on September 3, 2013. In their petition, the Boyds alleged that the Trivalent influenza (“flu”) vaccine which Janae received on January 14, 2013, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), caused her to suffer transverse myelitis. Petitioners further allege that Janae experienced the residual effects of her injuries for more than six months. Petitioners represent that there has been no prior award or settlement of a civil action for damages as a result of Janae’s condition.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Respondent denies that the influenza vaccine caused Janae's alleged injuries, any other injury or her current condition.

Nevertheless, the parties agree to the joint stipulation, attached hereto as "Appendix A." The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

A lump sum of \$250,000.00 in the form of a check payable to petitioners, as the Guardians/Conservators of the estate of Janae Leann Boyd, for the benefit of Janae Leann Boyd. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 13-634V according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6353.

IT IS SO ORDERED.

s/ Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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BOYD, on behalf of their minor child, JANAÉ
LEANN BOYD,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 13-634V
Special Master Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Eric Scott Boyd and Naomi Nicole Boyd (“petitioners”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”), on behalf of their minor child, Janae Leann Boyd. The petition seeks compensation for Janae’s injuries allegedly related to receipt of the trivalent influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).

2. Janae received the trivalent influenza immunization on January 14, 2013.

3. The vaccine was administered within the United States.

4. Petitioners allege that Janae suffered transverse myelitis that was caused-in-fact by her influenza vaccine. Petitioners further allege that Janae experienced the residual effects of her injuries for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages as a result of Janae's condition.

6. Respondent denies that the influenza vaccine caused Janae's alleged injuries, any other injury or her current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioners have filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$250,000.00 in the form of a check payable to petitioners, as the Guardians/Conservators of the estate of Janae Leann Boyd, for the benefit of Janae Leann Boyd. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioners have filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceedings upon this petition.

10. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health

benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraphs 8 and 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation, will be used solely for the benefit of Janae Leann Boyd, as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Janae Leann Boyd's estate under the laws of the State of Colorado. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Janae's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Janae Leann Boyd at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Janae Leann Boyd upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity, and as legal representatives of Janae Leann Boyd, on behalf of themselves, Janae, and her heirs, executors, administrators, successors or assigns, do forever irrevocably and

unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Janae resulting from, or alleged to have resulted from an influenza vaccination administered on or about January 14, 2013, as alleged by petitioners in a petition for vaccine compensation filed on or about September 3, 2013, in the United States Court of Federal Claims as petition No. 13-634V.

15. If Janae should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

17. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or

Respectfully submitted,

PETITIONERS:


ERIC SCOTT BOYD


NAOMI NICOLE BOYD

ATTORNEY OF RECORD FOR PETITIONERS:


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Dated: Feb. 2, 2015